

2013 WL 3487715 (Md.App.) (Appellate Brief)
Maryland Court of Special Appeals.

Michelle Lynn HUNDLEY, Appellant,
v.
STATE OF MARYLAND, Appellee.

No. 2223.
September Term, 2011.
February 5, 2013.

Appeal from the Circuit Court for Wicomico County
(David Mitchell, Judge)

Brief of Appellee

[Douglas F. Gansler](#), Attorney General of Maryland.

[Jessica V. Carter](#), Assistant Attorney General, Office of the Attorney General, Criminal Appeals Division, 200 Saint Paul Place,
Baltimore, Maryland 21202, (410) 576-6415, jcarter@oag.state.md.us, Counsel for Appellee.

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*1 STATEMENT OF THE CASE

Appellee, the State of Maryland, accepts the Statement of the Case set forth in the brief of Appellant, Michelle Lynn Hundley, with the following addition. Hundley was charged in the Circuit Court for Wicomico County with **neglect** of a vulnerable adult in the first degree that caused serious physical injury to Mrs. Baker, in violation of Md. Code Ann., Crim. Law Art., § 3-604(b)(2) (count 1); **neglect** of a vulnerable adult, in the second degree, in *2 violation of [Criminal Law Article, § 3-605\(b\) \(2\)](#) (count 2); and reckless endangerment in violation of [Criminal Law Article, § 3-204](#) (count 3). (R. 18-21). At the bench trial on October 4, 2011, before the Honorable David B. Mitchell, the State of Maryland, Appellee, entered a nolle prosequi on counts 2 and 3. (T1.12).¹

QUESTION PRESENTED

Was the evidence sufficient to sustain Hundley's conviction for **neglect** of a vulnerable adult in the first degree?

STATEMENT OF FACTS

The State accepts the Statement of Facts set forth in Appellant's Brief, as supplemented and modified in the following Argument.

ARGUMENT

THE EVIDENCE WAS SUFFICIENT TO SUSTAIN HUNDLEY'S CONVICTION FOR **NEGLECT** OF A VULNERABLE ADULT IN THE FIRST DEGREE.

Hundley claims that the State's evidence was insufficient to sustain her conviction for **neglect** of a vulnerable adult in the first degree. (Appellant's Brief at 8). The vulnerable adult, Ms. Mary Jane Baker, who is now deceased, was Hundley's grandmother. At all times relevant, Hundley lived in the house *3 with Mrs. Baker and other family members, including Mr. George Wilbur Baker, her grandfather and co-defendant. In this appeal, Hundley claims, in particular, that the State failed to prove that Hundley "**neglected**" Mrs. Baker "or that that **neglect** resulted in 'serious physical injury.'" (Appellant's Brief at 9). Hundley's claim should be rejected as the evidence was sufficient to sustain her conviction.

In reviewing the sufficiency of the evidence following an action tried without a jury, [Maryland Rule 8-131](#) provides, in pertinent part:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

[Md. Rule 8-131 \(c\)](#) (2012). The test for sufficiency of the evidence is whether that evidence, if believed, directly or inferentially permits the court to be convinced, beyond a reasonable doubt, of the defendant's guilt. [State v. Smith](#), 374 Md. 527, 533-34 (2003); accord [State v. Stanley](#), 351 Md. 733, 750 (1998); [Schwartz v. State](#), 103 Md. App. 378, 385 (1995). In considering the legal sufficiency of the evidence following a bench trial, the appellate court must determine whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *4 [State v. Albrecht](#), 336 Md. 475, 479 (1994), (quoting [Jackson v. Virginia](#), 443 U.S. 307, 318-19 (1979) (emphasis in original)).

Further, in a bench trial, as in a jury trial, the fact-finder is “entitled to (1) accept - or reject - all, part, or none of the testimony of any witness, including testimony that was not contradicted by any other witness, and (2) draw reasonable inferences from the facts that it found to be true.” *In re Gloria H.*, 410 Md. 562, 577 (2009). “Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder. We give ‘due regard to the [fact finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Smith*, 374 Md. at 533-534 (citations and quotations omitted).

Section 3-604(b) of the Criminal Law Article prohibits abuse or **neglect** of a vulnerable adult in the first degree. It provides, in pertinent part:

A household member or family member may not cause abuse or **neglect** of a vulnerable adult that:

- (I) results in the death of the vulnerable adult;
- (ii) causes serious physical injury to the vulnerable adult; or
- (iii) involves sexual abuse of the vulnerable adult.

*5 Md. Code Ann., Crim. Law Art., § 3-604(b)(2) (2002). At trial, Hundley agreed that Mrs. Baker was “a vulnerable adult” as defined by the statute, that is “an adult who lack[ed] the physical or mental capacity to provide for [her] daily needs.” (T1. 115). See Crim. Law Art., § 3-604(a)(10). Mrs. Baker was 84 years old on January 22, 2010, (T1. 57), and had been bed-ridden for approximately two years prior to January 22. (T1. 58-59, 133). There is also no dispute that Hundley was a household and family member of Mrs. Baker. See Crim. Law Art., § 3-604(a)(4)-(6). The State agrees that Hundley was not convicted of **neglect** of a vulnerable adult as a result of Mrs. Baker’s death or because of sexual abuse of Mrs. Baker. (Appellant’s Brief at 10).

Contrary to Hundley’s claim, however, the evidence was sufficient to sustain Hundley’s conviction for **neglect** of Mrs. Baker that caused serious physical injury to her. “**Neglect**” is defined in Section 3-604 as:

the intentional failure to provide necessary assistance and resources for the physical needs of a vulnerable adult, including:

- 1. food;
- 2. clothing;
- 3. toileting;
- 4. essential medical treatment;
- 5. shelter; or
- 6. supervision.

Crim. Law Art., § 3-604(a)(7)(I). “Serious physical injury” is defined in Section 3-604 as “physical injury” that:

- *6 (I) creates a substantial risk of death; or
- (ii) causes permanent or protracted serious:

1. disfigurement;
2. loss of the function of any bodily member or organ; or
3. impairment of the function of any bodily member or organ.

Crim. Law Art., § 3-604(a)(8). A person who violates [Section 3-604](#) is guilty of the felony of abuse or **neglect** of a vulnerable adult in the first degree. Crim. Law Art., § 3-604(c).

A. The evidence was sufficient to prove that Mrs. Baker was **neglected because she failed to receive necessary assistance and resources, including, in particular, food, toileting, and essential medical treatment.**

Testimony at trial describing Mrs. Baker's physical and medical condition and her physical surroundings on January 22, 2010, was graphic evidence of severe **neglect**. When emergency medical services responded to the Baker residence on January 22, they found an "**elderly** lady," Mrs. Baker, in a hospital bed in the living room. (T1. 36). Mrs. Baker had "**bed sores** and boils... on her backside and hip area." (T1. 42). The sheets on her bed were "yellow and saturated and [sic] blood and dried blood and urine." (T1. 36). It was reported to paramedic Stephanie Rathel that Mrs. Baker had **high blood pressure** but was unable to take the pills because of difficulty swallowing. (T1. 43). Ms. Rathel did not see the blood pressure pills at the house. (T1. *7 43). It was also reported to Ms. Rathel that Mrs. Baker was able to eat if the food was "cut up in very small pieces" and that she was also being fed Carnation Breakfast drinks. (T1.44). Ms. Rathel testified that Mrs. Baker was wearing only a shirt and was covered by a heavy blanket in the bed; she did not recall that Mrs. Baker had any bottoms on. (T1. 54-55). Ms. Rathel testified that they transported Ms. Baker to Peninsula Regional Medical Center ("PRMC") because "the condition [her] body was in." (T1. 51). According to Ms. Rathel, Mrs. Baker's body had sores that were "opened and oozing and bleeding." (T1. 51). Ms. Rathel, in response to the court's question about photographs of Mrs. Baker's toenails, testified that Mrs. Baker's toenails "were very long and, in between the toes,... it was black and necrotic between her toes, and the nails were very long on her toes." (T1. 53).

At the hospital, Registered Nurse Trina Forney examined Ms. Baker. She described Mrs. Baker's appearance:

She was in a fetal position on her side. She was non-verbal. She didn't really respond to me being in there talking to her at all. Very pale, skin was very thin, frail. And I immediately saw multiple pressure sores and ulcers on her.

(T1. 19). Hospital staff started Mrs. Baker on IV fluids and inserted a foley catheter. (T1. 20). Ms. Forney took photographs of Mrs. Baker's body and took measurements of the **wounds** and pressure sores on her body. (T1. 19, 21). Detective Brian Beaver confirmed Ms. Forney's description, testifying *8 that, when he saw Mrs. Baker at the hospital on January 22, 2010, she was "very frail," "contracted," and in a "fetal position." (T1. 90).

Ms. Kathy Mutzberg, a social worker, testified that she spoke to Mr. Baker, Mrs. Baker's husband, at the hospital, and he told her that Mrs. Baker had not been seen by a doctor for at least a year and that the only medication she was on was a cream for her sores. (T1. 60). He told her that Mrs. Baker was last bathed four to five days prior to her being transported to PRMC. (T1. 63). He also told her that Mrs. Baker had not eaten regular food for approximately six months, but that he had been feeding her Carnation Instant Breakfast drinks. (T1. 63). He told her that in the last three weeks things had "turned bad" and that he had to put the Carnation Instant Breakfast drink into a plastic baby bottle and squirt it into his wife's mouth because she did not have the strength to draw the liquid through a straw. (T1. 64).

Ms. Mutzberg went to the Baker residence a couple hours after Mrs. Baker had been taken to the hospital. (T1. 85). She described the living room where Mrs. Baker's hospital bed was located:

The front living room area, there was a hospital bed in the corner of the room where Ms. Baker had stayed. It had a foam, like a waffle pad on top of the mattress. That's what was there in the evening, and there were blood stains on it. There was the railing on the side where Mrs. Baker would have been had hair. [sic] It was matted to the chrome metal railing of the bed.

***9** There was numerous - there were little tables that were piled high with various things. There were pads for the bed. There were ointment and creams, but like I had said, there was just a lot of clutter there. That was somewhat of a path that went up straight towards the side of the bed. The other side of the bed was up against the wall and the window and the head of the bed was up against the other wall.

(T1. 68). Describing photographs shown to her, Ms. Mutzberg testified that "there was hair matted into the side of the rail. I'm not sure what the substance was that collected the hair there, but there was some kind of substance, and within that substance there was hair matted into those rails." (T1. 69). She described an area on a foam pad as "stained... that looked like blood." (T1. 69).

Ms. Mutzberg spoke to Hundley while at the Baker residence. Hundley told Ms. Mutzberg that she bathed Mrs. Baker as did Hundley's mother, Amy. (T1. 75). She and her mother showed Ms. Mutzberg what they used to bath Ms. Baker with - a plastic pitcher with a handle, a blue bin, similar to a hospital bin, and shower soap. (T1. 75). According to Ms. Mutzberg, the blue bin was "filthy" and "stained" a brownish color and "looked extremely dirty." (T1. 76).

Detective Beaver recounted his conversation with Mr. Baker at the hospital on January 22. (T1. 91). He testified that Mr. Baker could not remember when the last time Mrs. Baker had seen a doctor but that he thought ***10** it was "maybe a year." (T1. 91). Mr. Baker told Detective Beaver that he became concerned about his wife's condition three weeks prior. (T1. 92).

With Mr. Baker's consent to search his house, Detective Beaver went to the house. Detective Beaver described the house as "cluttered" with "very limited space to walk inside." (T1. 96). He described the hospital bed as "soiled, smelled of urine." (T1. 100). Identifying photographs, he testified that "[t]he sheets were extremely faded. The bed rails had hair sort of encrusted or embeded into the chrome stainless bed rails." (T1. 100, 102).

The medical records, which were admitted at trial, reflect Mrs. Baker's physical and medical condition when she was admitted to PRMC on January 22, 2010. ² During closing argument, the prosecutor read from some of the medical records. Time and again, as the prosecutor notes, the medical records state that Mrs. Baker was cachectic, ³ severely contracted, and suffering from malnutrition and multiple open [bedsores](#) on her body. (T2. 22- 25). The prosecutor recounted:

***11** [Dr. Thimmarayappa] notes... the patient, meaning Mary Jane Baker, was noted to be severely malnourished and cachectic. Apparently she had not seen - I'm sorry apparently she had not been seen for several years by a physician.

(T2. 22). He continued:

On the emergency comprehensive chart it's noted under chief complaint, [neglect](#), and under that [neglect](#), [bedsores](#).

The nursing assessment. Patient arrived smelling of cat urine, skin caked and dirty, hair unkempt and sticking to side of face in dried saliva. Patient has [bed sores](#) from right shoulder to right lateral side of foot, multi areas of [bed sores](#) on back and right hip in various stages. Patient given entire bed bath on arrival. Labia excoriated and swollen with tan color discharge.

(T2. 23). From another page of the emergency comprehensive chart, the prosecutor recounted:

the area over the posterior trunk, right scapular region shows a [decubitus ulcer](#). The patient has a superficial but contaminated and dirty [decubitus ulcer](#) approximately blank centimeters across. The area over the posterior trunk right scapular region shows a five by five centimeter [decubitus ulcer](#) which is moderately deep with some drainage. The patient has deep injury which is dirty and contaminated [decubitus ulcer](#)

approximately ten by six centimeters across. The area over the posterior surface of left thigh posterior left leg demonstrates a ten by six centimeter **decubitus ulcer** which is moderately deep with some drainage.

(T2. 24).

The trial court commented, after seeing photographs of Mrs. Baker's physical condition, that the photographs of Mrs. Baker looked like “the *12 survivors” of Auschwitz or photographs of “the mass graves... in Bosnia and Rwanda.” (T1. 124). The evidence was sufficient to prove that Mrs. Baker, a vulnerable adult, was the victim of **neglect**.

B. Mrs. Baker was severely **neglected and the evidence was sufficient to prove that Hundley, with others, was responsible for that **neglect**.**

Hundley, who was 27 years old at the time of trial and Mrs. Baker's granddaughter, lived with Mrs. Baker and other family members during the alleged time of **neglect**, March 3, 2009 through March 3, 2010. (T1. 131-32). Hundley testified that her grandmother had been bed-ridden for approximately two years prior to January 22, 2010, when emergency medical services responded to the Baker residence and transported Mrs. Baker by ambulance to PRMC. (T1.58, 133). At trial, Hundley agreed that she was responsible, with other family members, for caring for her grandmother, including bathing and feeding her, and keeping the house clean. (T1. 136-37, 156). She claims, however, that the evidence does not prove that she engaged in the “intentional failure to provide necessary assistance and resources.” (Appellant's Brief at 10). She argues the evidence shows that she “provided that necessary assistance to Mrs. Baker.” (Appellant's Brief at 11).

As the trial court reminded counsel:

[I]ntent is a state of mind and ordinarily cannot be proven directly because there is no way of looking into the mind of a person. Therefore, a person's intent may be shown by surrounding circumstances. We may consider the defendant's *13 acts and statements as well as the surrounding circumstances. We can also infer that a person ordinarily intends the natural and probable consequences of their acts or omissions.

(T1. 120). See *Graham v. State*, 117 Md. App. 280, cert. denied, 348 Md. 206 (1997) (“In determining the intent of the defendant, the trier of fact is permitted to infer the requisite intent from the surrounding circumstances.”); *Ford v. State*, 330 Md. 682 (1993) (“It is permissible to infer that ‘one intends the natural and probable consequences of his act.’”), *overruled on other grounds by Henry v. State*, 419 Md. 588, 601 (2011). Although Hundley claims not to have had the requisite intent, the evidence and reasonable inferences from that evidence tell a different story.

Hundley's testimony at trial was, at times, inconsistent with the evidence, and sometimes simply incredible given Mrs. Baker's condition when she was taken to PRMC on January 22, 2010. For instance, at trial, when asked what Mrs. Baker was eating in January, 2010, Hundley testified: “Like I said, she liked fried chicken. We'd buy it from the corner store a lot. She liked sausage. She got on a kick with corn flakes there for a while.” (T1. 137). She testified that she also fed Mrs. Baker Carnation Instant Breakfast drink “three times a day.” (T1.138). She testified that, up until January 22, Mrs. Baker could eat fried chicken and sausage, if cut up in small pieces. (T1. 162).

*14 The medical records, however, stated time and again that Mrs. Baker, upon admission, was severely malnourished and cachectic, conditions that did not occur overnight. Also, Mrs. Baker's husband, Mr. Baker (who was also a defendant), testified that his wife had stopped eating solid food six months prior to her admission to PRMC on January 22, and that, since that time, was fed mostly Carnation Instant Breakfast and milk. (T2. 7-8). Hundley's testimony was simply not believable.

Nor were Hundley's statements credible when she claimed that she bathed Mrs. Baker and cleaned the bed and sheets whenever they were soiled. (T1. 97, 99, 136, 139). As the evidence shows, Mrs. Baker arrived at PRMC "smelling of cat urine, skin caked and dirty, hair unkempt and sticking to the side of [her] face in dried saliva." (T2. 23). The paramedic who responded to the Baker's house on January 22, testified that the bed linens on Mrs. Baker's bed were yellow and saturated with blood, dried blood and urine. (T1. 36; *see also* T1. 69, 100-01, 103). There was also hair and saliva encrusted on the bed rails. (T1. 69, 101). Mr. Baker stated that his wife was last bathed four to five days before January 22. (T1. 63).

Hundley's testimony also was portrayed a complete lack of concern about obtaining medical attention for Mrs. Baker. Hundley agreed that the **bedsores** "were pretty severe looking," but insisted that all of them appeared just three weeks prior to Mrs. Baker being taken to PRMC. (T1. 152, 154, *15 162, 169). She testified that she did not attempt to call the doctor for assistance with the bed sores because, in her opinion, they were getting better. (T1. 169). Hundley made no effort to call the doctor or otherwise seek medical care for her grandmother because, in her words, there was no "dire reason" to do so. (T1. 169). This for an old woman who was not strong enough to draw liquid through a straw.

In any event, whatever Hundley's testimony, the trial court, as the fact-finder, was entitled to weigh her credibility and decide what, if any, of her testimony to believe. *See In re Gloria H.*, 410 Md. at 577. Likewise, the trial court, as fact-finder, was entitled to weigh the evidence and resolve any inconsistencies or contradictions in the evidence. *See Smith*, 374 Md. at 533-534. From the evidence, "any rational trier of fact" could reasonably infer that Hundley intentionally failed to provide necessary services and resources to Mrs. Baker. Hundley is an adult and she lived with her grandmother and saw her daily. She acknowledged being one of the persons responsible for Mrs. Baker's care. She intentionally failed to provide adequate food and nutrition to Mrs. Baker. She intentionally failed to provide adequate toileting and personal hygiene care to her. And, she intentionally did not take her grandmother to the hospital or consult with a doctor or otherwise seek essential medical treatment for Mrs. Baker's obviously failing physical and medical condition.

***16 C. Hundley's **neglect** of Mrs. Baker caused serious physical injury to Mrs. Baker.**

"Any rational trier of fact" could reasonably infer from the evidence that Hundley's **neglect** of Mrs. Baker "creat[ed] a substantial risk of death" as well as "caus[ed] permanent or protracted... disfigurement [or] loss of the function ... [or] impairment of the function of any bodily member." Crim. Code Art., § 3-604(a)(8)(I) and (ii). A fact-finder could reasonably infer from the evidence that Mrs. Baker was slowly being starved to death. She was "severely malnourished and cachectic." (T1. 22). As R.N. Forney explained, "cachexia" is "when someone is extremely emaciated, thin, frail...[u]sually, there's some **muscle wasting** with a significant loss of like fat and muscle." (T1. 18). Even if the trial court credited that Mrs. Baker was being fed something, the form and amount of nutrition was not enough to prevent a diagnosis of **severe malnutrition** and cachexia. When she was finally taken to the hospital, Mrs. Baker responded fairly soon: her appetite was "good," her dehydration was "corrected" and her "cachexia... improved with better nutritional status." (T2.22). "Any rational trier of fact" could reasonably infer that, had Mrs. Baker not been taken to the hospital when she was, her condition would have continued to deteriorate and caused or contributed to her untimely death. Hundley's **neglect** created in Mrs. Baker a substantial risk of death.

***17** In addition, because of Hundley's **neglect**, Mrs. Baker's bodily systems and functioning began to fail or disintegrate. For example, the open and severe **bedsores** signified a breakdown of one of her organs - her skin - because she was not being turned and repositioned in bed, as necessary, and the sores were not kept clean. Hundley knew that her grandmother needed to be turned in order to avoid getting **bedsores**, and claimed that she regularly turned her, but apparently she did nothing - used no pillows to control her rolling or to prop her in one position in bed - in order to prevent her grandmother from rolling back over onto the side where the **bedsores** were. (T1. 170, 174-76). When Hundley was cross-examined that she had done nothing to keep Mrs. Baker from rolling back to her right side, she responded that her grandmother liked to roll onto the right side and that her grandmother got what she wanted, even if it was not necessarily what was in her best interest. (T1.176).

In the words of the court, the **bedsores** were not the worst of it:

Mrs. Baker was vulnerable and frail. She needed the highest levels of care possible in order to sustain her life. She did not receive it. The consequence was, her body began to break down. Her systems began to fail. It's not just that she suffered from **bedsores** or obviously **wounds** and injuries, but her systems of support within her body, her functions within her body disintegrated. She became malnourished. And we find it significant that with the minimal level of care, that is through the provision of basic nutrients, she began her recovery. It's not only that she gained weight but she began to intake sustenance.

***18** (T2. 40; see App. 2-4). In sum, Hundley's **neglect** caused Mrs. Baker "permanent or protracted. disfigurement [or] loss of the function. [or] impairment of the function of any bodily member."

Hundley complains that the trial court was holding her to the standard of providing "the highest levels of care" for Mrs. Baker and that the statute does not impose such a standard. The State disagrees with that interpretation or characterization of the court's finding. In context, the court's comment clearly was an acknowledgment that, due to Mrs. Baker's frailty and vulnerability, Mrs. Baker could not feed herself, could not meet her own toiletry and personal hygiene needs, and could not seek and obtain essential medical care for herself. She required care for her most basic needs. Thus, due to her frailty and vulnerability, she required the highest level of care - someone to put food into her mouth, someone to clean her body when she urinated or defecated, and someone to obtain necessary and essential medical care for her. This is in contrast to a healthy person, who requires the lowest level of care, if any, in those areas.

And finally, Hundley tries to limit the focus of what constitutes a "serious physical injury" to Mrs. Baker's state of severe contraction, arguing that the evidence was not sufficient to prove that her state of contraction was "a serious physical injury" or caused by Hundley's actions. (Appellant's Brief at 12-13). Clearly, the trial court, in finding Hundley guilty, focused on Mrs.

***19** Baker's overall state of deterioration - her failed systems, the breakdown of her body. (T2. 40). Likewise, the prosecutor, in his closing argument, focused primarily on the overall state of Mrs. Baker's physical condition and health. (T2. 22-28). In any event, however, "any rational trier of fact," after examining the medical records and hearing the testimony at trial could have reasonably inferred that Mrs. Baker's severe state of contraction was caused, at least in part, by Hundley's **neglect**, particularly by the fact that Hundley did not seek essential medical attention for her frail and vulnerable grandmother for two to three years prior to January 22, 2010.

In sum, the evidence was sufficient to sustain Hundley's conviction for **neglect** of a vulnerable adult in the first degree.

***20 CONCLUSION**

For the foregoing reasons, the State respectfully requests that the judgment of the Circuit Court for Wicomico County be affirmed.

Footnotes

- 1** The State accepts Appellant's designation of the transcripts: T1 - Volume I of the transcript of October 4, 2011; T2 - Volume II of the transcript of October 4, 2011; and S - sentencing transcript of December 2, 2011.
- 2** Because the medical records are under seal, undersigned counsel has refrained from quoting directly from the records in this Brief of Appellee, but relies on the prosecutor's characterization of the contents of the records at trial and during closing argument. The trial court examined the medical records. (T1. 125). The medical records support the State's position that the evidence was sufficient to sustain Hundley's conviction.
- 3** According to the record, "cachexia" is "when someone is extremely emaciated, thin, frail... [u]sually, there's some muscle wasting with a significant loss of like fat and muscle." (T1. 18).